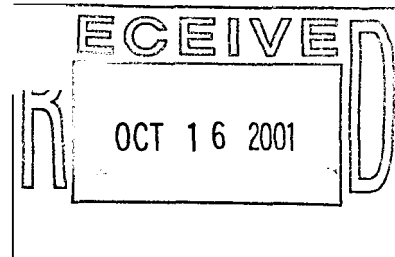




October 9, 2001

*faxed 10/9/01*



National Marine Fisheries Service  
Office of Protected Resources  
Permits Division (F/PR1)  
1315 East-West Highway  
Room 13705  
Silver Spring, MD 20910

RE: Docket No. 00103 1304-0304-01

Dear Madam/Sir:

As President of Dolphin Quest, Inc, a marine mammal public display institution with facilities on the Islands of Hawaii and Oahu, as well as facilities in French Polynesia and Bermuda, I am submitting comments on the National Marine Fisheries Service's (NMFS) Proposed Regulations amending public display requirements under the Marine Mammal Protection Act (MMPA), enacted in 1994.

Dolphin Quest believes that these Proposed Regulations are inconsistent with the 1994 amendments to the MMPA in the following areas:

1. We are concerned about the apparent attempt by NMFS to enter into some of the facility inspection authority of the USDA, APHIS. We can see no regulatory benefit to the proposed provision calling for "any person" designated by NMFS to have the right to examine any marine mammal and inspect any facility, including review and copy of all records. This is duplicative of regulatory oversight and raises legal issues of privacy.
2. Dolphin Quest objects strongly to the proposed NMFS position on marine mammal exportations. Although in December 10, 1996, an opinion from the Office of General Counsel, NOAA, stated the MMPA "does not confer U.S. jurisdiction over marine mammals in the territory of other sovereign states." Nevertheless, NMFS still insists on letters of comity for exportations and continues to maintain inventory oversight of animals long since out of US jurisdiction in foreign nations.

The 1994 Amendments provided that any person properly holding marine mammals for public display in the United States could export the animals "without obtaining any additional permit or authorization." The Amendments effectively addressed the export issue by stating that a marine mammal could be exported for public display if the receiving facility met "standards that are comparable under the MMPA for public display. Yet in order to receive the necessary CITES

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exportation permit for cetaceans, the US Fish and Wildlife Service defers to NMFS for permit authority, and NMFS will not issue such permission without satisfaction, by their sole consideration, of the comity provision. No such complicated, unenforceable and prohibitively expensive regulatory requirement is mandated for the export of any other non-endangered animal species.

We strongly object to all efforts by NMFS to apply the MMPA internationally, be it letters of "comity" or inventory requirements. These proposals not only raise very serious international relations issues, but they also raise serious questions about whether NMFS should be using its limited resources to transform itself into an international regulatory agency.

3. On the matter of transport notifications, the 1994 Amendments provide that a person issued a permit to take or import marine mammals for public display shall have the right "without obtaining any additional permit or authorization" to sell, transport, transfer, etc. the marine mammal to persons who meet the MMPA requirements. However, the Proposed Regulations ignore the simple and direct process contained in the MMPA. In the Proposed Regulations, this simple 15-day notification has been transformed into the submissions to NMFS of certifications of APHIS compliance (subject to further NMFS inspection and regulatory enforcement provisions), as well as multiple notifications before and after the transport transaction.


We object strongly to the additional requirements NMFS is proposing for the transfer of marine mammals. The agency has taken the simple notification requirement provided for in the MMPA and converted it into a needlessly cumbersome process that could result in the criminal penalties.

4. Regarding the reporting of stillbirths, Congress intended that the marine mammal inventory be a record of marine mammals actually held at public display facilities. It is neither appropriate nor necessary that the Proposed Regulations require facilities to report stillbirths since such animals will not become part of the inventory of animals at public display facilities.

The Alliance of Marine Mammal Parks and Aquariums will be submitting more detailed comments on these Proposed Regulations. We support the Alliance comments.

We hope these comments will be helpful in promulgating a rule that more closely reflects the 1994 amendments to the MMPA.

Sincerely,

  
Jay C. Sweeney, V.M.D.  
President, Dolphin Quest, Inc.